

## REMARKS

The Claims 1 and 6 have been amended to include the provision of venting for the bag thereby distinguishing between the conveying conduit for conveying a materials treating media into the bag and the venting thereof out of the bag. Eggenmuller stores partially cured hay and during fermentation, gases are generated which creates excess gas pressure. A ventilating pipe 54 is provided to vent these gases to the atmosphere. Alternatively, "if necessary", i.e., if necessary to provide additional venting, multiple "ventilating pipes" like that of ventilating pipe 54 may be provided along the length of the bag. See Col. 7, lines 53-61 of the Eggenmuller patent.

Applicant provides venting of the media from the bag through vent opening 34 and in that respect is similar to Eggenmuller. Unlike Eggenmuller, applicant's conduit 18 receives and distributes a treatment media into the material of the bag substantially evenly throughout the length of the bag. Thus, substantially all of the material in the bag is treated as the media flows into and through the material toward the vent opening. Even if the proposed multiple ventilating pipes of Eggenmuller were used as media treatment conduits rather than vent tubes, the treatment media would be introduced at spaced intervals along the length of the bag and the material in the bag would not be evenly treated.

Eggenmuller is not concerned with "even distribution" of a

treatment media. He merely provides venting for the gases generated by the curing process of the bagged material. Providing perforations in the pipes 54 as allegedly taught by Taylor does not produce a continuous pipe laid along the length of the bagged material and does not provide the even distribution of a media into the material. What the Examiner proposes is what is shown in the cited Meyer U.S. Patent No. 5,269,829.

It is understood that Taylor is only cited for the use of perforations. It is noted, however, that Taylor's perforated conduits are used as treatment conduits. They are mounted on a support structure and compost is piled around the supported conduits. See Col. 2, lines 40-46. The conduits are rigid, presumably to withstand the force of the compost being piled around them. See Col.2, lines 47-49. What cannot be derived from Taylor is how such a structure could be assembled in a flexible bag which is deployed during the bagging process.

Note the difference in applicant's structure. By feeding the tube into the material as the material is placed in the bag, the material itself supports the conduit. Further, there is no "piling" pressure applied to the conduits in applicant's process (the conduits are protected by the feed tubes 50 during "piling") and accordingly the conduits are not required (nor desired) to be rigid.

Applicant respectfully refutes the Examiner's contentions, i.e., "It would have been obvious at the time the invention was made to a person of ordinary skill in the art to have modified Eggenmuller's method and apparatus by modifying the conduit 54 by providing the conduit with multiple perforations as evidenced by Taylor so as to provide the ventilating characteristics of the conduit and fully aerate the material mass of the bag. Since it is common in the grain drying art to 'force' air within the contained grain to prevent spoilage of the grain, it would have been obvious to have connected the ventilating conduit 54 to a forced air source."

1. The Examiner's first modification is to convert Eggenmuller's ventilating pipes into conduits for a treatment media. There is no incentive for converting Eggenmuller's ventilating pipe(s) to treatment conduits. To the contrary, note that Eggenmuller suggests the use of one-way valving to prevent a media from entering the bagged material through the vent tubes. See Col. 7, lines 51-61.

2. Merely perforating a plurality of Eggenmuller's ventilating pipes does not produce applicant's continuous conduit extending lengthwise through the bagged material. It more closely resembles the Meyer's patent which does not evenly distribute the media.

3. None of the references suggests the manner of laying the conduit during the bagging process and into the bagged material through the mouth of the bag as provided by applicant. The only reference that shows a continuous lengthwise conduit is Taylor and Taylor pre-assembles the conduit and support therefor and subsequently piles the material around the conduit.

As concerns the Cullen reference, respectfully, applicant believes the Examiner to be in error.

"It is the Examiner's position that the claims in the application omit a provision which is determined to be an obvious variation to the content and gist of the claims set out in the Cullen reference, applied above." (At page 5, of the Office Action)

The Examiner is essentially saying that the reel support limitation is a meaningless limitation in the Cullen patent claim. Yet that very limitation is what convinced the Cullen Examiner to allow the claim. If the Cullen patent history is examined, it will be found that the reel support is the essential element in the combination of elements making up the claim.

In the present situation, Cullen was told that he was not

entitled to a patent that included laying a continuous pipe in a flexible bag being filled with material, the pipe to be used for treating the material with a medium. He retreated to an invention which required a specific form of holder supporting the pipe on the bagging machine. Applicant's invention is the same (for purposes of the argument here) as that which was originally refused to Cullen. The argument is not whether the Cullen disclosure discloses applicant's invention but whether the claims are claiming the same invention or an obvious variant thereof.

Consider the General Foods case. A prior patent claimed a process of obtaining caffeine from green coffee. A part only of that process was the steps for decaffeination of coffee. A subsequent patent claimed only the steps involved in decaffeination of the coffee. The lower court incorrectly concluded that all of the decaffeination steps were contained in the prior patent claim and a subsequent patent claim directed to the same decaffeination steps was double patenting.

That is essentially the present case, i.e., the Cullen patent claims a pipe support reel mounted on a bag filling machine through which the pipe is inserted into the bag. Applicant claims only the bag filling machine and the manner of inserting a pipe into the bag.

From the General Foods case, the comments at page 1280, second

column, are believed applicable to the present situation:

"This concept [developed by the lower court] violates the fundamental rule of claim construction, that what is claimed is what is  
5 defined by the claim taken as a whole, every claim limitation (here each step) being material. What is patented by Claim 1 of '619 is a 9-step caffeine recovery process, nothing  
10 more and nothing less.


A further error of the trial court in dealing with the '619 patent's Claim 1 was in looking, not at what invention it defines,  
15 but at whatever the claim discloses,"

Applicant's impression is that the present Examiner is similarly looking at what the Cullen claim discloses and not at what it claims. Furthermore, it is pointed out that the present  
20 Examiner is rejecting applicant's claim based on references (Eggenmuller and Taylor) that have no exterior conduit support, i.e., that supports a conduit length to be placed in the bag. It appears inconsistent to argue that a conduit support is inherent in applicant's apparatus and method so as to find an "obvious variant"  
25 and then reject the claims based on prior art that clearly does not require such a conduit support.

Whereas it appears that the issue of the §131 affidavit cannot be resolved, applicant is resigned to having to appeal the Examiner's decision on this issue to the Board of Appeals. The objective of the present response is to hopefully reduce the issues by obtaining removal of the rejection based on Eggenmuller in view of Taylor. The undersigned would appreciate the opportunity of a telephone interview should the Examiner not be persuaded to withdraw this latter rejection.



Respectfully submitted,

  
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CERTIFICATE OF MAILING

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service as First Class Mail, in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231, on the date indicated below.

Date

Jan 26, 1996

  
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